

subsection (2) shall be paid by the Crown on a solicitor and client basis.

Those who practise law will know that there is some difference between costs payable on a party and party basis and those payable on a solicitor and client basis.

Senator Hayden: On that point, all our experience and rules in connection with costs is that we have two tariffs: we have a solicitor and client tariff; and we have a party and party tariff. Normally, in a proceeding of this kind it would be on a party and party basis. The solicitor and client basis is at a higher rate. The question is whether it is the client who has the right to select a solicitor, and if he uses his judgment, no matter what the costs may be, should the other person have to pay that amount or should it be strictly and impersonally on a party and party basis?

Senator Choquette: I think a solicitor and client basis would be the logical step to be taken. This is a bill favouring the individual Canadian, and there are many steps that a solicitor would take, forced by certain clauses of the act and the wording of the act, and his client would have to pay him for those steps. I think, in all fairness to this litigant, his costs should be paid on a solicitor and client basis for that reason. This is a suggestion I am throwing into the discussion, and it could be argued pro or con.

The Acting Chairman: Senator Choquette, would you be good enough to draw honourable senators' attention to section 36 of the act as we have it, which deals with the subject matter of costs, where the decision is apparently left to the court?

Senator Choquette: Yes.

Senator Flynn: In section 36(1), but in section 36(2) it is on the basis of solicitor and client.

Senator Hayden: That is where a party whose land has been taken gains an additional amount over and above what the minister paid. This is in the nature of a penalty.

Senator Flynn: That is all right. That is a privilege we give to the minister, to apply for delay to make the offer. I think it should fall in the same class as the case where the amount he has offered is not judged sufficient.

Senator Hayden: Mr. Chairman, I have stated my position, but I would not object to putting in "solicitor and client basis"

Senator Choquette: Those are my amendments, Mr. Chairman.

The Acting Chairman: Those are two, but you have not referred to the third.

Senator Choquette: The third one is at the bottom of the second page:

Page 34: Strike out subclause (4) of clause 33 and substitute therefor the following:

"(4) When an offer is not made until after the expiration of the applicable period described in paragraph (b) of subsection (1) . . .

The Acting Chairman: Is it "applicable"?

Senator Choquette: Yes, it is "applicable". I have made the correction in my copy, but it is not in the others, apparently. This is using the wording of the act itself.

"When an offer is not made until after the expiration of the applicable period described in paragraph (b) of subsection (1) of section 14 for the making of an offer of compensation by the Minister, interest, in addition to any interest payable under subsection (2) or (3), shall be payable by the Crown at the basic rate on the compensation, from the expiration of that period to the day upon which an offer is made by the Minister."

The Acting Chairman: Honourable senators, you have the three proposed amendments of Senator Choquette. Following the procedure heretofore followed with respect to Senator Hayden's thoughts, do we now have the consensus of honourable senators that we should support the amendments as suggested by Senator Choquette under the three headings mentioned? Is that the view of honourable senators?

Senator Hayden: In principle.

The Acting Chairman: In principle, and it flows from that, as I understand it, that we will now be asking, with your approval, the Justice Department to prepare . . .

Mr. Munro: I have some remarks to make on this, Mr. Chairman.

The Acting Chairman: I am sorry, I apologize, and we will withdraw the assumption that there has been a consensus until we have heard from the department.

Senator Hayden: The jury has not been polled!

Mr. Munro: As I understand it the proposed amendment is entirely different from the provision in the Ontario statute. I do not know whether everyone has a copy of that provision. The similar provision in the Ontario statute is designed to protect the expropriating authority, whereas this proposed amendment is designed to protect the expropriated owner. I am not satisfied myself that it is really necessary, but the Ontario provision, which is section 25, in effect does